



UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte CRAIG D. ULLMAN, MICHAEL R. ABATO,  
JEFFREY M. HARRINGTON and CARL R. DUDA

---

Application No. 09/409,305

---

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

---

This application was received electronically at the Board of Patent Appeals and Interferences on January 24, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that the appellants filed the Appeal Brief of March 8, 2005 using the format set forth in 37 CFR § 41.37(c).

Upon an in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief of March 8, 2005:

1) "Evidence Appendix", as set forth in 37 CFR  
§ 41.37(c)(1)(ix); and

2) "Related Proceedings Appendix", as set forth in 37 CFR  
§ 41.37(c)(1)(x).

A Supplemental Appeal Brief that is in compliance with 37 CFR  
§ 41.37(c) is required. For more information See United States  
Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), in particular the web  
page entitled More Information on the Rules of Practice Before the  
BPAI, Final rule at:

[http://www.uspto.gov/web/offices/dcom/bpai/fr2004/  
moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/<br/>moreinfo.html).

Also, the Examiner's Answer mailed May 31, 2005 does not comply  
with the headings as set forth in the new rules under 37 CFR  
§ 41.37(c). Correction is required.

Further, an Information Disclosure Statement (IDS) was filed  
December 1, 2004. It is not apparent from the record that the  
examiner considered the statement submitted nor notified applicants  
of why his submission did not meet the criteria set forth in 37 CFR  
§§ 1.97 and 1.98.

Accordingly it is

**ORDERED** that the application is electronically returned to the  
Examiner:

- 1) to hold the Appeal Brief of March 8, 2005 defective;
- 2) for applicant to file a Supplemental Appeal Brief in compliance with 37 CFR § 41.37 or for the Examiner to submit a statement regarding the position taken on the missing appendices;
- 3) for the Examiner to vacate the Examiner's Answer mailed May 31, 2005, and submit a revised Examiner's Answer in compliance with the new rules effective September 13, 2004;
- 4) for the Examiner to consider the Information Disclosure Statement filed December 1, 2004; and
- 5) and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: \_\_\_\_\_



CRAIG FEINBERG  
Program and Resource Administrator  
(571) 272-9797

GJH

cc: MORRISON & FOERSTER LLP  
1650 TYSONS BOULEVARD  
SUITE 300  
MCLEAN, VA 22102